

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1042 OF 2001

IN

COMPANY PETITION NO.149 OF 2001

...

USV Ltd. ...Appellant

v/s.

Magna Laboratories (Gujarat)

Pvt.Ltd. ...Respondent

...

Mr.Subramaniam i/b Dhru & Co. for the Appellant.

Mr.V.P.Sawant i/b A.P.Jakhadi for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. By this Appeal, the Appellant challenges the order dated 4th October, 2001 passed by the learned single Judge of this court in Company Petition No.149 of 2001. The learned single Judge by that order has made a conditional order. He has said that if an amount of Rs.1 Crore is deposited within a period of twelve weeks from the date of the order, the company petition shall stand disposed of, otherwise, it shall stand admitted. The learned single Judge noted that if the amount is deposited, it will be transferred to the credit of the civil suit. The cause of action for filing a civil suit, it is clear from the order, accrued to the Respondent in 1998-99. Admittedly, till today no civil suit has been filed for recovery of dues. Therefore, the debt on the basis of which the company petition for winding up of the company was filed, cannot be said to be alive debt today.

. Perusal of the judgment of the Division Bench in the case of Kashinath Shankarappa v/s. The New Akot Cotton Ginning and Pressing Co.Ltd., AIR (38) 1951

Nagpur 255, shows that the debt has to be alive on the date on which the order for liquidation of the company is made. In the present case, conditional order for admitting the petition was made and that order was stayed in this appeal. Today, we are hearing the appeal finally. We find that there is no live debt.

2. Taking overall view of the matter, therefore, specially considering the admission of the company petition for winding up of the company is in the discretion of the court, in our opinion, it will not be appropriate to allow the company petition for winding up of the Appellant/company to be admitted on the basis of the claim which cannot be said to be alive claim at least as on today.

3. In the result, therefore, appeal succeeds and is allowed and the order of the learned single Judge impugned in the Appeal is set aside.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)